

REMARKS

Claims 1-20 are pending. Claims 1-20 were rejected. Claims 10-20 would be allowable if rejection of claim 10 under 35 USC 112 is overcome.

Claims 1-20 were rejected under 35 USC 112, second paragraph, as being indefinite, with specific reference to lines 7-15 of claim 1 and lines 15-23 of claims 10, wherein the Examiner requested clarification. Specifically, the Examiner requested clarification of "selective operating parameters", "selective electrical signals in response thereto", "a first gate position initiation to a second position", "gate position duration", and "reception of data".

With regard to "selective operating parameters", Applicant's exemplary embodiment includes a preset intervals (page 7, line 2 and page 8, line 9) but is not limited thereto. "Selective electrical signals in response thereto" is illustrated by exemplary low battery indicators, listening devices, train sensors (page 7, lines 2-9), bump switches (page 10, line 16), leveling switch (page 12, line 6), electric eye (page 14, line 3), etc. and is not limited thereto. Regarding gate positions which include up, down, extended and retracted, Applicant notes the exemplary discussion of "...a leveling switch which initiates extension when the gate arm become substantially horizontal..." (page 12, lines 6-7). Regarding the inquiry to "gate position duration", Applicant notes that the application is replete with numerous examples and teachings of movement of the gate from one position to another for preset

intervals or in response to a signal as may be initiated by an event, and thus the elements claimed have a duration of a particular position as taught herein and easily understood by one of skill in the art reading the present application. Regarding "reception of data", Applicant refers to exemplary teaching of "programming", "downloading", "install or modify the PLC program" (page 18, lines 17 - 21) which is clearly understood by one of skill in the art to includes "data" and thus also "reception of data". Applicant further argues that the above exemplary references do not limit the scope of the present invention. Applicant therefore believes that the rejection of claims 1-20 under 35 USC 112, second paragraph, as being indefinite is overcome.

Claims 1-6 were rejected under 35 USC 103(a) as being unpatentable over Carr in view of Bertieri et al, wherein the Examiner argues, as he has identically argued in his prior Office Action, that Carr discloses a crossing assembly comprising a gate means connectable to a stanchion and movable between a generally upright position to permit access therethrough, and a controller (38) for controlling the function and operation of the door. While the Examiner admits that Carr fails to disclose a programmable controller using relays and wireless links, the Examiner asserts that Bertieri discloses a controller using relays and wireless remote control links to program and operate a movable closure, and that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Carr with

a programmable controller as taught by Bertieri.

Claim 7 was rejected further in view of Keeling et al.

Claims 8 and 9 were rejected further in view of Fox or Loban et al.

Applicant notes that in Bertieri, only the hand-held remote control 12, which issues an infrared signal to be received by a receiver 14 and then a controller 16, is programmable as to *mimic codes* (col 11, lines 58 - 62). The term 'control' in the remote control 12 apparently is only relevant with regard to *human control* of an infrared input to the apparatus of Bertieri. It is apparently *only* the non-programmable controller 16 which controls the appliance(s), is responsive to no operating parameters and received no signals from the remote control 12 of the nature of those claimed.

By contrast, the apparatus of claim 1, as previously amended, comprises:

"gate means connectable to a stanchion and movable between a generally upright position to permit access across the railroad crossing and a generally horizontal position for blocking access across the railroad crossing; and
programmable electronic controller responsive to at least one of selective gate operating parameters and selective electrical signals, provides at least one output signal in response thereto to said gate means to programmably control at least one of a first gate position motion initiation in response to a second gate position, gate position duration, a communication of diagnostic data, a communication of video data, an initiation of a failure condition, and the reception of electronic controller programming data,

not found in the cited art of record. The Examiner agrees that

Carr does not provide the claimed programmable electronic means. Bertieri shows only a programmable hand-held remote control, well known in many arts to be wholly distinct from any control means or programmable electronic means for controlling any operation as disclosed and defined in the present application.

Bertieri, does not provide the claimed programmable structure having response to selective gate operating parameters or selective electrical signals, or that which is structured to provide any of the gate position, duration, communication of diagnostic data, failure condition and/or reception of programming data control according to the claimed invention.

Bertieri's 'programmable' controller 12, from which the presently claimed assembly having a "programmable electronic controller responsive to ...operating parameters and selective...signals..." and provides one of "...motion initiation,...position duration,...communication of... data,...failure condition, and...reception of...data" is patentably distinguishable, provides no operating parameter or electrical control signal, and no programmable control of any of these claimed inventive features, nor has any facility to do so.

Therefore, Applicant argues that the hand-held controller 12 and its analogs provide no structure which can be combined with Carr to provide the presently claimed invention.

Furthermore, the appliance controllers 16, 40 of Bertieri provide no disclosure, teaching or suggestion of controller programming thereof. Thus Applicant further argues that Bertieri

is inadequate to provide the missing structure which together with Carr would provide the invention of claim 1, and that either cite does not teach, suggest or disclose any such claimed combination. The claims dependent on claim 1 provide additional inventive features which further patentably distinguish the present invention over the cited art of record. Applicant therefore believes that the rejection of claims 1-6 under 35 USC 103(a) as being unpatentable over Carr in view of Bertieri et al, and the rejection of claims 7 further in view of Keeling et al., and the rejection of claims 8 and 9 further in view of Fox or Loban et al, is without basis and should be withdrawn, or in the alternative, is overcome.

The Examiner's statement that Applicant's prior arguments were not persuasive was made without clarification or specific refutation, and the rejections were substantially the same as the prior Office Action. So that Applicant can fully respond, he respectfully requests further details in any future rejection, and an indication where the distinctive inventive elements as claimed, indicated above, are found, and where the combination taught and motivation to combine are presented in the cited art. Moreover, if there is an assertion that any information in support of a rejection is "known in the art", Applicant respectfully requests a tangible citation which illustrates that assertion.

Applicant, having amended distinguished the present invention over the cited art of record, believes that the objections and rejections to the present application are overcome. Applicant respectfully requests reconsideration and allowance of the present application. The Examiner is invited to call the Applicant's undersigned attorney should he feel that such a call would further the prosecution of the present application.

Respectfully submitted,
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